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**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

IN RE VERIFONE HOLDINGS, INC.)
 SECURITIES LITIGATION)

Master File No.
 C 07-6140 MHP

CLASS ACTION

This Document Relates To:)
)
 All Actions)

**THE ISRAELI INSTITUTIONAL
 INVESTOR GROUP'S RESPONSE TO
 SUPPLEMENTAL MEMORANDUM**

JUDGE: Hon. Marilyn Hall Patel

1 Lead Plaintiff Movants The Phoenix Insurance Company, Ltd., Prisma Provident Funds, Ltd.,
 2 Prisma Mutual Funds, Ltd., Harel Insurance Company, and Harel Pia Mutual Funds (collectively, the
 3 “Israeli Institutional Investor Group” (“IIIG”) or “Movants”) respectfully submit this response to
 4 CLAL and Direct’s Supplemental Memorandum in Response to the Israeli Institutional Investor
 5 Group’s Notice of Substitution of Counsel and in Further Opposition to Its Motion for Appointment
 6 as Lead Plaintiff (“Suppl. Mem.”).

7 With reported losses totaling less than 20% of the Israeli Institutional Investor Group’s, it is
 8 not surprising that CLAL and Direct criticize the IIIG’s substitution of proposed lead counsel in
 9 hopes of replacing the IIIG as the most adequate lead plaintiff candidate. While the Supplemental
 10 Memorandum contains a myriad of rambling accusations, CLAL and Direct appear to be claiming
 11 that “[i]t is not in the Class’s or this Court’s best interest to have unappointed counsel substitute lead
 12 counsel on the whim of the unappointed counsel’s self-interests,” Suppl. Mem. at 4, and that “[t]here
 13 is simply not enough evidence to demonstrate that Motley Rice and the Rubinstein’s [sic] satisfy the
 14 adequacy requirement for IIG pursuant to Rule 23(a)(4),” *id.* at 5. However, the issue before this
 15 Court is whether (a) the IIIG is the most adequate lead plaintiff and (b) whether the Court should
 16 approve IIIG’s selection of lead counsel.

17 CLAL and Direct’s “arguments” about the IIIG’s adequacy are completely unpersuasive. The
 18 IIIG specifically retained Motley Rice LLC to represent them in this litigation by letter of July 3,
 19 2008 – signed by each member of the IIIG – and specifically asked that Motley Rice enter an
 20 appearance on its behalf.¹ Thus, CLAL and Direct’s speculative and incorrect assertion that “[i]t is
 21 questionable whether the members of IIG understand what has been occurring in their names,” Suppl.
 22 Mem. at 3, is ridiculous. The IIIG is in complete control of the litigation, as evidenced by *its* choice
 23 to substitute proposed lead counsel. CLAL and Direct claim, without citation to any authority, that
 24 “[n]o explanation was given for the substitution, and no motion has been made to appoint Motley
 25 Rice as Lead Counsel or Kazan McClain as Liaison Counsel in this class action.” Suppl. Mem. at 2.

27 ¹ The IIIG and Motley Rice will be happy to provide a copy of the retainer letter agreement to the
 28 Court for in camera inspection should the Court so desire.

Neither the IIIG nor its counsel is aware of any requirement that a civil plaintiff in the Northern District of California provide an “explanation” for why they have substituted counsel. Moreover, there is no requirement under the Local Rules of the Northern District of California that a party make a motion to substitute counsel. *See* N.D. Cal. Local Civ. R. 11-5.² Here, former proposed lead counsel for the IIIG, Chitwood Harley Harnes, withdrew and was relieved by order of the Court (Dkt. 135) after Motley Rice entered an appearance in the case (Dkt. 130). CLAL and Direct also complain that “[m]issing from any of the documents submitted by Rubinstein or Motley Rice is a signed statement from the client.” Suppl. Mem. at 2. Unlike other federal district courts in California, however, the Northern District does not require a party to submit a written substitution of attorney signed by the party and the withdrawing and substituted attorneys.³ Northern District of California General Order No. 45, Electronic Case Filing, section IV.C.5, does provides that: “The replacement of one firm by another as counsel for a party also requires an order of the court.” The IIIG has requested this order from the Court. (Dkt. 134.)

CLAL and Direct try to focus the Court’s attention on the Rubinsteins, who have been on all the pleadings the IIIG has filed and have been admitted *pro hac vice*. For example, CLAL and Direct

² Local Civil Rule 11-5 provides:

11-5. Withdrawal from Case.

(a) Order Permitting Withdrawal. Counsel may not withdraw from an action until relieved by order of Court after written notice has been given reasonably in advance to the client and to all other parties who have appeared in the case.

(b) Conditional Withdrawal. When withdrawal by an attorney from an action is not accompanied by simultaneous appearance of substitute counsel or agreement of the party to appear *pro se*, leave to withdraw may be subject to the condition that papers may continue to be served on counsel for forwarding purposes (or on the Clerk, if the Court so directs), unless and until the client appears by other counsel or *pro se*. When this condition is imposed, counsel must notify the party of this condition. Any filed consent by the party to counsel’s withdrawal under these circumstances must include acknowledgment of this condition.

³ Compare N.D. Cal. Local Civ. R. 11-5 with C.D. Cal. Local Civ. R. 83-2.9.2.2; E.D. Cal. Local Civ. R. 83-182(g); S.D. Local Civ. R. 83.3.g.2. *See also Williams v. Am. Airlines*, No. C 07-540 CW, 2008 WL 149146, at *1 (N.D. Cal. Jan. 14, 2008) (noting that notice of substitution of counsel was filed and that the court ordered shortly thereafter that plaintiff’s counsel be substituted).

1 claim that “[t]here simply is not enough evidence to demonstrate that Motley Rice *and the*
 2 *Rubinstein’s* [sic] satisfy the adequacy requirement for IIG pursuant to Rule 23(a)(4).” Suppl. Mem.
 3 at 5. CLAL and Direct completely miss the point. The question is whether IIG is the most adequate
 4 plaintiff, and whether the Court should appoint Motley Rice (not the Rubinsteins) as lead counsel.
 5 As the Ninth Circuit has made clear:

6 Selecting a lawyer in whom a litigant has confidence is an important client prerogative
 7 and we will not lightly infer that Congress meant to take away this prerogative from
 8 securities plaintiffs. And, indeed, it did not. While the appointment of counsel is made
 9 subject to the approval of the court, *the Reform Act clearly leaves the choice of class*
 10 *counsel in the hands of the lead plaintiff.*

11 *In re Cavanaugh*, 306 F.3d 726, 734 (9th Cir. 2002) (emphasis added).

12 In its Notice of Substitution of Counsel, the IIG made clear that Motley Rice is experienced
 13 as a lead plaintiff in securities fraud class actions, including such cases as *In re UBS AG Securities*
 14 *Litigation*, No. 1:07-cv-11225-RJS (S.D.N.Y.), *In re Dell, Inc. Securities Litigation*, No. A-06-
 15 CA726-SS (W.D. Tex.), *In re Molson Coors Brewing Co. Securities Litigation*, No. 1:05-294-KAJ
 16 (D. Del.), *In re NPS Pharmaceuticals, Inc. Securities Litigation*, No. 2:06-CV-00570-PGC-PMW (D.
 17 Utah), *Marsden v. Select Medical Corp.*, No. 04-CV-4020 (E.D. Pa.), *Baker v. MBNA Corp.*, No. 05-
 18 272 (D. Del.), and *Abrams v. Micrus Endovascular Corp.*, No. 07-22601 (S.D. Fla.).

19 CONCLUSION

20 For all of the above reasons, and in light of the pleadings and documents submitted by the
 21 IIG in this consolidated action, the IIG respectfully requests that the Court appoint the IIG as lead
 22 plaintiff and approve its selection of Motley Rice as lead counsel.

23 Date: July 18, 2008

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CERTIFICATE OF SERVICE

JUDGE: Hon. Marilyn Hall Patel

I hereby certify that on July 18, 2008, I electronically filed the foregoing *The Israeli Institutional Investor Group's Response to Supplemental Memorandum* with the Clerk of the Court using CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List

Date: July 18, 2008

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